

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Mr. JUSTICE M.H.S. ANSARI

and

THE HON'BLE Mr. JUSTICE T.Ch.SURYA RAO

WRIT PETITION No. 23175 of 2004

Between:

M/s.TRF Ltd., rep by its Site Assistant Mr.G.V.N.Ramakrishna
Port Area, Visakhapatnam-530 035.

..... PETITIONER

AND

- 1.The Commercial Tax Officer
Kurupam Market Circle, Visakhapatnam.
- 2.The Deputy Commissioner (CT),
Visakhapatnam Division, Visakhapatnam.
- 3.The Additional Commissioner (CT) Legal,
Andhra Pradesh, Nampally,
Hyderabad.
- 4.The Appellate Deputy Commissioner (CT), Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction quashing the order of 3rd respondent in CCT's Ref.No.LV(3)/2912/04 dt 15-10-2004 as illegal, arbitrary and unreasonable and consequently restrain the 1st respondent from taking any coercive steps for recovery of the disputed demand for interest in a sum of Rs.21,58,356/- pursuant to the order 1st Respondent dated 22-6-2004 pending disposal of the appeal before the 4th Respondent.

Counsel for the Petitioner: Mr.S.DWARAKANATH

Counsel for the Respondents: GP FOR COMMERCIAL TAXES

The Court made the following :

ORAL ORDER: (per M.H.S.Ansari, J.)

Having heard learned counsel for the respective parties, we are of the view that instant Writ Petition can, and, needs to be disposed of at this stage. For the said reason, it is not necessary to go into the merits of the contentions centering upon the main controversy. This is for the reason that what is questioned in the instant Writ Petition is the order dated: 15.10.2004 passed by the third respondent rejecting application seeking stay of collection of levy of interest of Rs.21,58,356.00, pending disposal of the appeal before the fourth respondent.

Petitioner was assessed for the year 1999-2000, which order was revised resulting in increase of rate of tax. Appeal filed by the assessee is pending adjudication before the Sales Tax Appellate Tribunal. The main demand itself is *sub judice*, and, thus, has not attained finality. Besides, there is an order of Court staying recovery of certain portion thereof. The learned Additional Commissioner (CT), however, considering the question from the view point of balance of convenience and relying upon the judgment of the Supreme Court in **Asst. Collector of Central Excise, Chandanagar v. Dunlop India Limited**, rejected the application of the assessee for stay.

As already noticed, the order with respect to the main demand itself is subject matter of appeal before the learned Sales Tax Appellate Tribunal and pending disposal of that appeal, there is an order of this Court in W.P.No.15675 of 2003, copy of which is at page 25 of the instant Writ Petition directing the Sales Tax Appellate Tribunal to dispose of the appeal for the assessment year 1999-2000 on condition of the petitioner depositing one fourth of disputed tax within the time framed therein. In such view of the matter, instant Writ Petition is disposed of directing stay of the impugned demand pertaining to levy of interest of Rs. 21,58,356/- pending disposal of the appeal before the fourth respondent. Consequently, the impugned order dated: 15.10.2004 is set aside. Writ Petition is, accordingly, disposed of in terms as above. Be it clarified that it shall be open to the fourth respondent to dispose of the appeal pending before it in accordance with law uninfluenced by any observation

made in this judgment and order.

M.H.S.ANSARI, J.

14.12.2004.

T.Ch.SURYA RAO, J.

VR.

To

- 1.The Commercial Tax Officer
Kurupam Market Circle, Visakhapatnam.
- 2.The Deputy Commissioner (CT),
Visakhapatnam Division, Visakhapatnam.
- 3.The Additional Commissioner (CT) Legal,
Andhra Pradesh, Nampally,
Hyderabad.
- 4.The Appellate Deputy Commissioner (CT), Visakhapatnam.
5. Two CCs to Government Pleader for Commercial Taxes, High Court Buildings,
Hyderabad (OUT).
6. Two CD copies.
7. The Sales Tax Appellate Tribunal, Hyderabad.